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Attorneys for Plaintiffs
7 LENSRAFTERS, INC. and EYEXAM OF
CALIFORNIA, INC.
8

UNITED STATES DISTRICT COURT
9
NORTHERN DISTRICT OF CALIFORNIA
10
OAKLAND DIVISION
11

12 LENSRAFTERS, INC. and EYEXAM
13 OF CALIFORNIA, INC.,

14 Plaintiff,

15 v.

16 LIBERTY MUTUAL FIRE INSURANCE
COMPANY; EXECUTIVE RISK
17 SPECIALTY INSURANCE COMPANY;
UNITED STATES FIRE INSURANCE
18 COMPANY; MARKEL AMERICAN
INSURANCE COMPANY and
19 WESTCHESTER FIRE INSURANCE
COMPANY,
20

Defendant.
21

22 AND RELATED COUNTER- AND
CROSS- CLAIMS.

Case No. C-07-2853 SBA

Assigned to Chief Magistrate Judge
James Larson for All Discovery
Purposes

**STIPULATION AND ORDER
DISMISSING CERTAIN CLAIMS
WITH PREJUDICE**

1 The undersigned parties to this action hereby stipulate to the following matters and
2 respectfully request that the Court to enter an order dismissing certain claims *with prejudice*, as
3 set forth below.

4 A. In this action, Plaintiffs LensCrafters, Inc. and EYEXAM of California,
5 Inc. (together, “LensCrafters”) seek insurance coverage for claims asserted against them in a class
6 action lawsuit entitled *Snow, et al. v. LensCrafters, Inc., et al.*, San Francisco Superior Court Case
7 No. CGC-02-405544 (“*Snow*”). The *Snow* action plaintiffs, on behalf of a class of more than one
8 million customers, alleged that LensCrafters violated California’s Confidentiality of Medical
9 Information Act (“COMIA”) by disclosing private medical information.

10 B. After years of negotiations, LensCrafters reached a settlement with the
11 plaintiffs in *Snow*. The *Snow* settlement became effective on October 11, 2008. Each of the
12 defendant insurers, with the exception of United States Fire Insurance Company (“U.S. Fire”),
13 has consented to the settlement. In connection with the *Snow* settlement, LensCrafters has signed
14 settlement agreements with each of the defendant insurers, with the exception of U.S. Fire.
15 Specifically, LensCrafters has settled with Liberty Mutual Fire Insurance Company (“Liberty”),
16 Executive Risk Specialty Insurance Company (“ERSIC”), Westchester Fire Insurance Company
17 (“Westchester”), and Markel American Insurance Company (“Markel”).

18 C. Pursuant to these settlement agreements, LensCrafters, Liberty, ERSIC,
19 Westchester, and Markel agreed to dismiss certain claims against certain parties without
20 prejudice. The Court dismissed these claims without prejudice in orders dated March 19, 2008,
21 April 23, 2008 and October 7, 2008 (Docket Nos. 124, 136, 137, 149).

22 D. The settlement agreements further provided that the parties would file
23 dismissals with prejudice. Accordingly, LensCrafters, Liberty, ERSIC, Westchester, and Markel
24 now seek to dismiss certain claims against each other with prejudice.

25 E. As part of LensCrafters’s settlement with Markel, Markel has assigned to
26 LensCrafters rights that Markel has or may have against U.S. Fire related to the *Snow* action,
27 including claims for contribution, subrogation and indemnity (the “Assigned Claims”). The
28 Assigned Claims are unaffected by this stipulation.

THEREFORE, LensCrafters, Liberty, ERSIC, Westchester, and Markel, by and through their attorneys of record, stipulate that:

1. LensCrafters may dismiss all claims against Liberty *with prejudice*;
2. LensCrafters may dismiss all claims against ERSIC *with prejudice*;
3. LensCrafters may dismiss all claims against Westchester *with prejudice*;
4. LensCrafters may dismiss all claims against Markel *with prejudice*.
5. Westchester may dismiss all claims against LensCrafters *with prejudice*;
6. Markel may dismiss all claims against LensCrafters *with prejudice*;

DATED: November 7, 2008

ORRICK, HERRINGTON & SUTCLIFFE LLP

By /s/ Richard DeNatale
 Richard DeNatale
 Attorneys for Plaintiffs
 LENS CRAFTERS, INC. and EYEXAM OF CALIFORNIA, INC.

DATED: November 20, 2008

WILLOUGHBY, STUART & BENING

By /s/ Alexander F. Stuart
 Alexander F. Stuart
 Attorneys for Defendant
 LIBERTY MUTUAL FIRE INSURANCE COMPANY

DATED: November 10, 2008

ROSS, DIXON & BELL, LLP

By /s/ Monique Fuentes
 Monique Fuentes
 Attorneys for Defendant
 EXECUTIVE RISK SPECIALTY INSURANCE COMPANY

DATED: February 11, 2009

LONG & LEVIT LLP

By /s/ Irene Yesowitch
 Irene Yesowitch
 Attorneys for Defendant
 MARKEL AMERICAN INSURANCE COMPANY

1 DATED: November 14, 2008

HARRIS, GREEN & DENNISON

2 By /s/ Robert D. Dennison

3 Robert D. Dennison

4 Attorneys for Defendant

WESTCHESTER FIRE INSURANCE COMPANY

ORDER

Good cause appearing, IT IS HEREBY ORDERED that:

1. LensCrafters's claims against Liberty are *dismissed with prejudice*;
2. LensCrafters's claims against ERSIC are *dismissed with prejudice*;
3. LensCrafters's claims against Westchester are *dismissed with prejudice*;
4. LensCrafters's claims against Markel are *dismissed with prejudice*;
5. Westchester's claims against LensCrafters are *dismissed with prejudice*;
6. Markel's claims against LensCrafters are *dismissed with prejudice*.

DATED: 2/17/09



UNITED STATES DISTRICT JUDGE